

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES D. SMITH,

Plaintiff,

v.

BRIAN MCGARVIE, et al.,

Defendants.

Case No. C05-5156RJB

ORDER OVERRULING  
OBJECTIONS AND  
AFFIRMING ORDER OF  
MAGISTRATE JUDGE

This matter comes before the Court on plaintiff's objections to an order of the magistrate judge. Dkt. 52. The court has considered the pleadings filed in support of the motion and the file herein.

On September 29, 2005, U.S. Magistrate Judge J. Kelley Arnold issued an order denying plaintiff's motion to strike the declaration of Sharon Morgan, denying plaintiff's motion for discovery, denying plaintiff's motion for appointment of counsel, and denying plaintiff's motion to strike defendant's affirmative defenses. Dkt. 46.

Plaintiff has now filed objections to the September 29, 2005 order of the magistrate judge. Dkt. 52. Included with the objections are plaintiff's Motion for Enlargement of Time Due to Extenuating Circumstances and a Motion Requesting Leave to Take Depositions Upon Oral Examination. *Id.*

Under Fed.R.Civ.P. 72(a), upon objection by a party to a pretrial order of a magistrate judge, the district judge shall consider the objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.

In his objections, plaintiff first contends that the magistrate judge erred in denying his motion to appoint counsel. A review of the file shows that plaintiff has demonstrated an adequate ability to articulate

1 his claims *pro se*, and he has not shown that he is likely to succeed on the merits of his claim. The  
2 magistrate judge did not err in finding that there were no exceptional circumstances warranting  
3 appointment of counsel.

4 Plaintiff also objects to the magistrate judge's denial of his motion for discovery and his motion to  
5 strike the declaration of Sharon Morgan. As the magistrate judge noted, plaintiff had not shown that he  
6 had met and conferred with opposing counsel, as required by Local Rule CR 37(a), before filing a motion  
7 for discovery; therefore, he is not entitled to a court order compelling discovery. Further, the declaration  
8 of Sharon Morgan was filed in support of defendants' opposition to plaintiff's motion for a temporary  
9 restraining order, and plaintiff has not shown adequate reason for striking the motion.

10 Plaintiff's objections to the September 29, 2005 order of the magistrate judge should be overruled  
11 and the order should be affirmed.

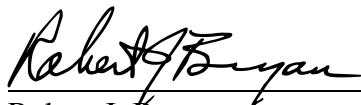
12 Along with his objections, plaintiff filed a Motion for Enlargement of Time Due to Extenuating  
13 Circumstances and a Motion Requesting Leave to Take Depositions Upon Oral Examination. Dkt. 52.  
14 These motions should be referred to the magistrate judge.

15 Therefore, it is hereby

16 **ORDERED** that plaintiff's objections to the order of the magistrate judge (Dkt. 52) are  
17 **OVERRULED**, and the September 29, 2005 Order of the magistrate judge (Dkt. 46) is **AFFIRMED**.  
18 Plaintiff's Motion for Enlargement of Time Due to Extenuating Circumstances and Motion Requesting  
19 Leave to Take Depositions Upon Oral Examination (Dkt. 52) are **REFERRED** to the magistrate judge.

20 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any  
21 party appearing *pro se* at said party's last known address.

22 DATED this 28<sup>th</sup> day of October, 2005.

23 

24 Robert J. Bryan  
25 United States District Judge  
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